

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: March 3, 2006

To: The Commission
(Meeting of March 15, 2006)

From: Delaney Hunter, Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: **AB 1935 (Bermudez) Railroads: maintenance and safety.**
As Introduced February 1, 2006

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: Support with amendments

SUMMARY OF BILL:

This bill would require the Rail Operations Safety Branch (ROSB) of the Consumer Protection and Safety Division of the California Public Utilities Commission (CPUC) to increase inspections of Class 1 railroad (UPRR and BNSF) locomotives, equipment and facilities located in rail yards in the state from once every 180 days to once every 120 days, to increase track inspections from once a year to once every six months, to recycle usable and functioning automatic grade crossing safety equipment removed after upgrade by installing the removed equipment at crossings that have no such equipment, to establish “a list of root causes and significant contributing factors of all train accidents or derailments” the CPUC investigates, and “to collect and analyze ‘near miss’ data generated from incidents at railroad crossings and along railroad rights-of-way” including data concerning runaway trains or other uncontrolled train movements threatening public health and safety when reported to the CPUC.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

AB 1935, which predominantly consists of proposals recommended by the CPUC’s Rail Safety Action Plan, would enhance railroad safety.

SUMMARY OF SUGGESTED AMENDMENTS (if any):

The CPUC recommends “sun rising” the increased inspection requirements as of July 1, 2008 in order to give ROSB the time to hire and train the necessary staff to effectively implement more frequent safety and track inspections.

DIVISION ANALYSIS (CPSD):

Increased Inspections

- More frequent inspections of railroad safety equipment, facilities, and track would allow ROSB to more closely monitor the railroads’ own inspection duties as well as correct dangerous safety and track conditions.
- Six additional state railroad inspectors will need to be hired and certified by the FRA in order for ROSB to conduct the increased number of inspections required by this bill. Newly hired railroad inspectors require roughly a year to train and become certified by the Federal Railroad Administration (FRA) as State Participation Plan inspectors.
- The CPUC’s Rail Safety Action Plan (RSAP) recommended that the railroads increase their track inspections in urban areas. AB 1935, on the other hand, requires the CPUC to increase its inspections. Typically, CPUC inspectors perform an oversight role to ensure the railroads’ own inspection forces meet the minimum inspection standards required by law.

Recycling of Crossing Equipment

- The recycling of usable and functioning automatic grade crossing safety equipment by installing the equipment at crossings that previously had no such equipment would increase the safety of unprotected crossings.
- Recycling will also result in an economic benefit to the state through the use of valuable, albeit older, crossing equipment, some of which was originally purchased with state funds.
- The railroads currently return this uninstalled equipment to their own inventories or discard it.
- Grade crossings already nominated by the CPUC for improvement with Section 130 funding will be readily eligible to receive recycled equipment if such an improvement has been recommended by CPUC.
- Alternatively, grade crossing improvement nominations based on the availability of recycled warning device equipment may have to wait for up to three years after

nomination before actual construction can begin due to environmental permitting requirements and other administrative hurdles.

- Finally, there may be an impact on CPUC staff in order to verify functionality and operability of recycled equipment, particularly in instances when the donor railroad or recycle recipient claims obsolescence or disrepair.

Citation Process

- The scope of the CPUC's authority is articulated in PU Code § 2115. The CPUC has issued a number of orders which specify specific railroad safety standards that are not covered by federal law. For example:
 - GO 26-D Side and overhead clearances at railroads
 - GO 75-C Protection of railroad-highway grade crossings
 - GO 118 Construction and maintenance of walkways adjacent to railroads
 - GO 135 Occupancy of public grade crossings by railroads
- Currently, instances of non compliance must first be investigated, then presented to the CPUC for consideration of an Order to Institute an Investigation (OI), consistent with Rule 14 of the CPUC's Rules of Practice and Procedure, in order to formally and officially advise the railroad of the non-complying condition, and to recommend to the CPUC that the matter be set for hearing.
- As an alternative to the extensively structured process described above, the citation process will streamline the administrative process by granting divisional staff CPUC-delegated-authority to identify and investigate instances of non-compliance, prepare a penalty analysis and recommendation, and serve a field citation on the non-complying railroad. The railroad will still have the option to respond to divisional staff with a settlement offer, or appeal the matter to hearing before the CPUC's Administrative Law Division (ALJ) Division.
- The CPUC already has established precedent for this type of citation process in the Transportation Enforcement Branch of CPSD.

Reporting of Root Causes

- Creation of a list of root causes and significant contributing factors for railroad accidents and derailments would provide ROSB with more current and accurate information than presently available from the FRA. Understanding the root causes and significant factors in railroad accidents would provide ROSB with a more thorough knowledge of railroad operations problems within the state and allow ROSB to draw conclusions with respect to possible remedies for those problems.

Collection of "Near Miss" Data

- ROSB has for some time recommended that railroads provide it and Operation Lifesaver with near miss data to better protect railroad lines from problem at-grade crossings and trespasser incidents.

FISCAL IMPACT:

This bill would require CPUC to hire an additional 6 railroad safety inspectors (2 Associate Railroad Equipment Inspectors, 4 Associate Railroad Track Inspectors), and 2 PURA III. An initial training period of up to one year per inspector will be necessary before the railroad inspectors would be certified by the Federal Railroad Administration (FRA) to conduct the inspections mandated by the bill. The CPUC estimates the total ongoing costs of this bill to be \$781,071 annually.

STATUS: This bill has been referred to the Assembly Utilities & Commerce Committee, and is awaiting a hearing date.

SUPPORT/OPPOSITION: Unknown.

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Date: March 3, 2006

BILL LANGUAGE:

BILL NUMBER: AB 1935 INTRODUCED
BILL TEXT

INTRODUCED BY Assembly Member Bermudez

FEBRUARY 1, 2006

An act to amend Sections 765.5 and 7711 of, and to add Sections 1202.7, 2115.1, 7662, and 7711.1 to, the Public Utilities Code, relating to railroads, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1935, as introduced, Bermudez Railroads: maintenance and safety.

(1) Existing law requires the Public Utilities Commission to inspect railroad locomotives, equipment, and facilities located in class I railroad yards in California not less frequently than every 180 days, and inspect all branch and main line track not less frequently than every 12 months.

This bill would require that the inspection of railroad equipment and operating procedures occur not less frequently than every 120 days, and the inspection of branch and main line track, and operating procedures occur not less frequently than every 6 months.

(2) Existing law establishes the safety division of the commission. The safety division is responsible for inspection, surveillance, and investigation of the rights-of-way, facilities, equipment, and operations of railroads and public mass transit guideways, and for enforcing state and federal laws, regulations, orders, and directives relating to transportation of persons or commodities, or both, of any nature or description, by rail.

This bill would require that usable, functioning automatic grade crossing safety equipment that is removed because of improvement or upgrade work be installed at a crossing that does not have an automatic warning device.

Under existing law, a violation of the Public Utilities Act or an order or direction of the commission is a crime.

Because this provision of this bill would be a part of the act, the bill would impose a state-mandated local program by creating a new crime.

(3) Existing law authorizes the commission, whenever the commission determines that a railroad corporation has violated any order of the commission concerning the adequacy, condition, or safety of the corporation's cars or tracks or any related fixture or appliance, to impose a fine for each violation or day a violation continues uncorrected.

This bill would require that the commission develop a citation

process for violations subject to fines pursuant to this provision.

(4) Existing law requires the commission to require every railroad corporation operating in this state to develop, in consultation with, and with the approval of, the Office of Emergency Services, a protocol for rapid communications with that office, the Department of the California Highway Patrol, and designated county public safety agencies in an endangered area if there is a runaway train or any other uncontrolled train movement that threatens public health and safety. Existing law requires a railroad corporation to promptly notify the office, the department, and the public safety agencies, through a communication to the warning center of the office, if there is a runaway train or other uncontrolled train movement threatening public safety, in accordance with the developed communications protocol.

This bill would require the California Highway Patrol or a designated county public safety agency that responds to a railroad accident to report the accident to the Office of Emergency Services and to the commission. By placing additional reporting requirements upon county public safety agencies, the bill would impose a state-mandated local program.

(5) Existing law requires the commission to annually report to the Legislature on sites on railroad lines in the state that it finds to be hazardous, including a list of all commodities transported on railroad lines that could pose a hazard to the public or the environment in the event of a train derailment or other accident, a description of the quantities of these commodities, and the locations and routes that these materials are transported, and a list of all railroad derailment accident sites in the state on which accidents have occurred within at least the previous 5 years.

This bill would require the annual report to include a list of the root causes and significant contributing factors of all train accidents or derailments investigated.

The bill would require the commission to collect and analyze "near miss" data generated from incidents occurring at railroad crossings and along the rail right-of-way, including data relative to runaway trains or any other uncontrolled train movements that threaten public health and safety reported to the commission pursuant to the bill.

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

(7) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 765.5 of the Public Utilities Code is amended

to read:

765.5. (a) The purpose of this section is to provide that the commission takes all appropriate action necessary to ensure the safe operation of railroads in this state.

(b) The commission shall dedicate sufficient resources necessary to adequately carry out the State Participation Program for the regulation of rail transportation of hazardous materials as authorized by the Hazardous Material Transportation Uniform Safety Act of 1990 (P.L. 101-615).

(c) On or before July 1, 1992, the commission shall hire a minimum of six additional rail inspectors who are or shall become federally certified, consisting of three additional motive power and equipment inspectors, two signal inspectors, and one operating practices inspector, for the purpose of enforcing compliance by railroads operating in this state with state and federal safety regulations.

(d) On or before July 1, 1992, the commission shall establish, by regulation, a minimum inspection standard to ensure, at the time of inspection, that railroad locomotives, equipment and facilities located in ~~Class~~ class I railroad yards in California will be inspected not less frequently than every ~~180~~ 120 days, and inspection of all branch and main line track not less frequently than every ~~12~~ six months.

SEC. 2. Section 1202.7 is added to the Public Utilities Code, to read:

1202.7. Whenever usable, functioning automatic grade crossing safety equipment is removed from, and not reinstalled at, a railroad crossing because of improvement or upgrade work, rather than be discarded, the removed equipment shall be installed at a railroad crossing that does not have an automatic warning device.

SEC. 3. Section 2115.1 is added to the Public Utilities Code, to read:

2115.1. The commission shall develop a citation process for violations of Section 2115.

SEC. 4. Section 7662 is added to the Public Utilities Code, to read:

7662. Whenever the California Highway Patrol or a designated county public safety agency responds to a railroad accident, the accident shall be reported to the Office of Emergency Services and to the commission.

SEC. 5. Section 7711 of the Public Utilities Code is amended to read:

7711. ~~On or before July 1, 1992,~~ Annually and on or before July 1 ~~annually thereafter~~, the commission shall report to the Legislature on sites on railroad lines in the state it finds to be hazardous. The report shall include, but not be limited to, information on all of the following:

(a) A list of all railroad derailment accident sites in the state on which accidents have occurred within at least the previous five years. The list shall describe the nature and probable causes of the accidents, if known, and shall indicate whether the accidents occurred at or near sites that the commission, pursuant to subdivision (b), has determined pose a local safety hazard.

(b) A list of all railroad sites in the state that the commission, pursuant to Section 20106 of Title 49 of the United States Code, determines pose a local safety hazard. The commission may submit in

the annual report the list of railroad sites submitted in the immediate prior year annual report, and may amend or revise that list from the immediate prior year as necessary. Factors that the commission shall consider in determining a local safety hazard may include, but need not be limited to, all of the following:

- (1) The severity of grade and curve of track.
- (2) The value of special skills of train operators in negotiating the particular segment of railroad line.
- (3) The value of special railroad equipment in negotiating the particular segment of railroad line.
- (4) The types of commodities transported on or near the particular segment of railroad line.
- (5) The hazard posed by the release of the commodity into the environment.
- (6) The value of special railroad equipment in the process of safely loading, transporting, storing, or unloading potentially hazardous commodities.
- (7) The proximity of railroad activity to human activity or sensitive environmental areas.
- (8) *A list of the root causes and significant contributing factors of all train accidents or derailments investigated.*

(c) In determining which railroad sites pose a local safety hazard pursuant to subdivision (b), the commission shall consider the history of accidents at or near the sites. The commission shall not limit its determination to sites at which accidents have already occurred, but shall identify potentially hazardous sites based on the criteria enumerated in subdivision (b) and all other criteria that the commission determines influence railroad safety. The commission shall also consider whether any local safety hazards at railroad sites have been eliminated or sufficiently remediated to warrant removal of the site from the list required under subdivision (b).

SEC. 6. Section 7711.1 is added to the Public Utilities Code, to read:

7711.1. The commission shall collect and analyze near miss data generated from incidents occurring at railroad crossings and along the rail right-of-way. For purposes of this section, "near miss" includes a runaway train or any other uncontrolled train movement that threatens public health and safety reported to the commission pursuant to Section 7661.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 8. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

Five train derailments have occurred in less than two years, three of them occurring in the span of one month. This is part of a disturbing trend across California. The number of train accidents has increased exponentially since 1997. In 1997, there were 105 train accidents. By 2003, there were 187. In 2005 the state was projected to have 228 train accidents. Because there is a need to resolve this problem now, in order to keep Californians safe, it is necessary that this act go into immediate effect.